IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6522 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

GHANSHYAMSINH ANANDSINH JAEEJA, CONDUCTOR

Appearance:

1. Special Civil Application No. 6522 of 2001
MR SUDHANSHU S PATEL for Petitioner No. 1
MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/12/2001

ORAL JUDGEMENT

In this petition, which is in substance a petition under Article 227 of the Constitution, the Gujarat State Road Transport Corporation has challenged the judgment and award dated 16.2.2001 passed by the Labour Court, Rajkot in Reference (LCR) No. 202 of 1996 whereby the Labour Court set aside the order of dismissal dated 5.6.1996 passed against the respondent-conductor and directed the petitioner-Corporation to reinstate the respondent on the original post with continuity of service, but without any backwages for the intervening

period.

2. The respondent joined the service as a conductor under the petitioner-Corporation in the year 1990. On the basis of an incident which took place on 21.8.1995, a departmental inquiry was held against the respondent on the charge that the respondent had collected fare but not issued tickets to some passengers. At the conclusion of the inquiry, the Disciplinary Authority dismissed the respondent from service by order dated 5.6.1996. The respondent's departmental appeal also came to be dismissed. Hence, the respondent raised an industrial dispute which was referred to the Labour Court, Rajkot. The Labour Court held that the charge of misappropriation was not proved, though the respondent was guilty of negligence in not issuing tickets. On that basis, the Labour Court held that the penalty of dismissal was disproportionate and harsh. The Labour Court, therefore, passed the award for reinstatement with continuity of service but denied backwages to the respondent on the ground that the respondent was guilty of negligence and that denial of backwages would amount to sufficient penalty for such negligence.

It is the aforesaid award which is under challenge in this petition.

3. Mr Sudhanshu Patel, learned counsel for the petitioner-Corporation has vehemently submitted that the misconduct alleged against the respondent was in two parts. The first part pertained to non-issuance of tickets to two passengers after having collected Rs.8 from each of them and the second misconduct pertained to non-issuance of tickets to a group of six passengers and non-recovery of fare from them. Mr Patel vehemently submitted that while the second act could be treated as negligence, the first misconduct was very serious and it amounted to misappropriation.

Mr Patel further submitted that in any view of the matter looking to the past defaults committed by the respondent, the penalty of dismissal was not disproportionate or harsh.

4. On the other hand, Mr KM Paul, learned counsel for the respondent workman has opposed the petition and submitted that the findings given by the Labour Court are findings of fact and do not warrant any interference by this Court in exercise of its extraordinary jurisdiction under Article 227 of the Constitution when the Labour Court has not committed any jurisdictional error. Strong

reliance has been placed on the decision of the Apex Court in Mohd. Yunus vs. Mohd. Mustaqim, AIR 1984 SC 38.

5. Having heard the learned counsel for the parties, it appears from the finding given by the Labour Court with regard to the second part of alleged misconduct that the six passengers themselves agreed before the Corporation that they had not taken tickets and agreed to pay the penalty to the tune of 10 times the amount of bus fare, hence it is clear that the respondent had not committed any serious misconduct.

6. As far as the first part of the alleged misconduct is concerned, it is true that the allegation against the respondent that he had collected fare of Rs.8 each from two passengers and not issued tickets was found by the Disciplinary Authority to have been proved, but the Labour Court interfered with the said finding of the employer and held that there was negligence, but no misappropriation. For arriving at the said finding, the Labour Court held that the checking party had not verified the cash available with the respondent and that the statement of one of the passengers was not taken in his writing nor has any other passenger signed the same as a witness. As far as this part of the finding given by the Labour Court is concerned, all that can be said at the most is that two views were possible and the Labour Court could have accepted the finding of the Disciplinary Authority but in any case the view taken by the Labour Court cannot be said to be perverse so as to warrant interference by this Court under Article 227 of the Constitution.

As far as the relevance of past defaults is concerned, the same would be relevant only if it is held that the misconduct of misappropriation alleged against the respondent was proved. Since the Labour Court has given a finding of fact that the said allegation was not proved, there is no question of referring to the past misconducts.

7. Having regard to the aforesaid aspect and the peculiar facts and circumstances of the case, the Court is not inclined to disturb the award given by the Labour Court but with a rider that the respondent shall not be entitled to get any wages not merely for the period from the date of dismissal till the date of award but also from the date of the award till the date of reinstatement if the respondent is given reinstatement with continuity of service by 31.12.2001. Thus, over and above denial of

backwages to the respondent for the period from the date of dismissal i.e. 5.6.1996 till the date of the award i.e. 16.2.2001, the respondent is further being denied wages for the period from 16.2.2001 till the date of reinstatement which will have to be made by 31.12.2001.

8. In view of the above discussion, subject to the direction that the respondent shall be reinstated with continuity of service by 31.12.2001 and further direction that if the respondent is so reinstated within the aforesaid time limit and with continuity of service, the respondent shall not be paid any wages for the period from the date of the award (16.2.2001) till the date of reinstatement, the petition is dismissed.

9. Subject to the above directions, Rule is discharged with no order as to costs.

(M.S. Shah, J.)
sundar/-